

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW HAMPSHIRE

IMS HEALTH INCORPORATED, a Delaware)
corporation and VERISPAN, LLC, a Delaware)
limited liability company,)

Plaintiffs,)

vs.)

KELLY A. AYOTTE, as Attorney General of)
the State of New Hampshire,)

Defendant.)

Case No. 06-CV-280-PB

Declaration of Robert J. Hunkler in Support
of Plaintiffs' Motion for Preliminary Injunction

I, Robert J. Hunkler, hereby declare under penalty of perjury that the following is true and correct:

1. I am over 18 years of age. I am the director of professional relations for IMS Health Incorporated ("IMS Health"). I am the primary liaison between IMS and physicians, physician groups, and other healthcare providers. I deal with the day-to-day operational and contractual issues with the American Medical Association, field concerns from physicians, and assist the IMS public and government affairs groups with proposed legislation.

2. I have personal knowledge of the information provided in this declaration.

3. During the performance of my duties, I have met with many doctors and representatives of organizations of doctors and I have discussed with them their views on the collection of prescriber identifiable data by health information companies, such as IMS Health.

4. The views of physicians regarding use of information about their prescribing practices is important to IMS Health because IMS Health's primary objective is to develop and

deliver information that helps pharmaceutical companies and others efficiently deliver effective, innovative and safe healthcare services and products to the public.

5. IMS Health gathers information about prescribing practices so that it may be used by pharmaceutical companies and others for various commercial and non-commercial purposes.

6. Patient-de-identified prescription information gathered by IMS Health from pharmacies and similar entities is valuable to prescribers and their patients because it can illustrate for doctors the actual disposition in the marketplace of the prescriptions they have written. Doctors generally know the prescriptions they wrote, but they do not have an effective means to learn about whether their patients are filling their prescriptions. The information gathered by IMS Health can show each doctor what was actually dispensed by pharmacists filling prescriptions they wrote. By doing that, IMS Health can track ratios of patient non-compliance with prescriber instructions to take a specific drug, insurer effects on patient compliance with prescriber instructions, and generic utilization or substitution rates. IMS Health also can provide data that shows which doctors are prescribing which drugs -- information that can be critical to an individual prescriber's assessment of the safety and effectiveness of a particular drug.

7. Pharmaceutical companies have long recognized the benefits associated with gathering information about the prescribing practices of doctors. Sales representatives for pharmaceutical companies began gathering data from doctors and pharmacies in the 1940s and some maintained informal data sources for certain geographic areas over the course of years and decades. As database technology became more sophisticated and affordable, large health information companies, such as IMS Health, created systematic, nationwide directories that could show in detail any given doctor's prescribing practices, broken down by product and volume. Such databases have been available from IMS for license since 1993.

8. Pharmaceutical companies have used the prescriber-level information extensively in order to identify those prescribers who would be most interested in new products and to focus their marketing efforts on those prescribers. For example, if a set of doctors regularly prescribe cholesterol reducing drugs, pharmaceutical companies can use IMS Health information to direct their marketing for new, safer, more effective cholesterol reducing drugs to those specific doctors, rather than to all prescribers, including those who never prescribe cholesterol reducing drugs. By focusing their marketing efforts in this way, pharmaceutical companies can significantly reduce the cost of their marketing efforts. They also can ensure that those prescribers who have the greatest need for information about new products or samples of new products will get that information and those samples.

9. IMS Health also has made prescriber-level information available free of charge to academic researchers, medical researchers, government agencies, industry observers and others who use the data for a variety of purposes that are unrelated to the sale of a particular product (*e.g.* to support research, analysis, development and implementation of practice guidelines and public health policy for the purpose of advancing patient health).

10. The American Medical Association (“AMA”) Physician Masterfile is a valuable source of information about prescribers. It contains demographic, educational, certification, licensure, and specialty information for more than 800,000 active U.S. medical doctors (MDs) and over 90% of the doctors of osteopathy (DOs), including both AMA members and nonmembers. The AMA licenses its Masterfile to IMS Health and other health information companies so that they can combine the information therein with the information that they obtain from pharmacies and similar entities to produce reliable data regarding prescriber practices. Thus, for example, a pharmacy may provide information to IMS Health reflecting that Dr. R. Smith wrote a prescription for a certain drug that was filled at a pharmacy in Concord, New

Hampshire. The AMA Masterfile would reflect that a Dr. Richard P. Smith of Concord, New Hampshire has a specialty that generally calls for use of the prescribed drug. By combining the information from the pharmacy with the information from the AMA Masterfile, IMS Health and other health information companies are able to reliably report that Dr. Richard P. Smith prescribed the certain drug.

11. Because some doctors prefer that their prescriptions not be made available by pharmacies and similar entities to pharmaceutical company sales representatives, the AMA initiated a program on July 1, 2006, which uses health information companies' dependence on the AMA Masterfile to allow any physician to prevent having prescribing information relating to her prescribing practices released to pharmaceutical company sales representatives. The program is called the Prescribing Data Restriction Program ("PDRP").

12. Under the PDRP, if a physician advises the AMA that she does not want prescribing information regarding her prescribing practices made available to pharmaceutical company sales representatives, the AMA license of its Masterfile requires that such prescribing information be shielded from pharmaceutical sales representatives.

13. IMS Health strongly believes that the widespread dissemination and use of the patient-de-identified prescription information that they gather and analyze, including prescriber identifiable data, is vital to improve the health and welfare of consumers. IMS Health, however, is required by its licensing agreement with the AMA to abide by the AMA's rules and restrictions on the use of the prescriber data.

14. By enrolling in PDRP, individual physicians in the United States can prevent sales representatives and certain other pharmaceutical company employees who contact them from accessing information about their prescribing practices. The goal of the program is to strike a reasonable balance between the interests of those physicians who object to sales representatives

knowing individual physician prescribing history and the interests of many other stakeholders, such as pharmaceutical companies, public health agencies, academia, and consumers, who benefit from insight into physician prescribing decisions.

15. In connection with initiating the PDRP program and while New Hampshire was considering the Prescription Restraint Law (House Bill 1346), the AMA released a statement indicating that it “is troubled by pending legislation that would prohibit or severely restrict the collection and disclosure of prescribing information that identifies a specific physician prescriber.” (<http://www.ama-assn.org/ama1/pub/upload/mm/432/webrxposition.pdf>). The AMA explained that it has been a long standing advocate of legislative efforts to protect patient confidentiality and agrees strongly that the unauthorized dissemination of any identifiable patient information is inappropriate and illegal pursuant to federal HIPAA law, but that it believes that physician prescribing data do not undermine patient confidentiality laws because all patient data have been de-identified prior to the collection and aggregation of this information.

16. The AMA also took the position that “There are many important reasons for state legislatures to reject measures to impose broad limitations on disclosure of physician prescribing data. Most significantly, this information is critical to improving the quality, safety and efficacy of pharmaceutical prescribing through evidence-based medical research.” The AMA correctly noted that health information companies utilize its Masterfile to match and append prescribing data, package these data into various products, and license the resulting information to the pharmaceutical industry, academia and government entities. The AMA also correctly observed that this use of prescribing data generates profits to make possible the development of a variety of derivative research databases that would otherwise go unfunded and that through these databases, hundreds of studies are made available to the medical community for a wide variety of activities to improve health care quality and safety.

Executed on July 27, 2006, in Plymouth Meeting, Pennsylvania.

_____/s/ Robert J. Hunkler
Robert J. Hunkler